

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

AUXILIUM PHARMACEUTICALS, INC. and FCB I LLC,	X	
	:	
	:	
	:	Honorable Jose L. Linares, U.S.D.J.
	:	
Plaintiffs,	:	Civil Action No. 12 CV 3084 (JLL) (MAH)
	:	
v.	:	Electronically Filed
	:	
WATSON LABORATORIES, INC.,	:	
	:	
Defendant.	:	
	:	
	:	
	:	
	X	

**STIPULATION AS TO U.S. PATENT NOS.
7,608,605; 7,608,606; 7,608,607; 7,608,608; 7,608,609;
7,608,610; 7,935,690; 8,063,029; and 8,178,518**

WHEREAS this action has been brought by Plaintiffs Auxilium Pharmaceuticals, Inc. and FCB I LLC (collectively, “Plaintiffs”) against Defendant Watson Laboratories, Inc. (“Watson”);

WHEREAS Plaintiffs asserted that Watson’s ANDA No. 09-1073 (“Watson’s ANDA”) infringes, among others, United States Patent Nos. 7,320,968; 7,608,605; 7,608,606; 7,608,607; 7,608,608; 7,608,609; 7,608,610; 7,935,690; 8,063,029; and 8,178,518 (respectively, the ’968 patent, the ’605 patent, the ’606 patent, the ’607 patent, the ’608 patent, the ’609 patent, the ’610 patent, the ’690 patent, the ’029 patent, and the ’518 patent) (*see* D.I. 1);

WHEREAS Watson filed Counterclaims for declarations of noninfringement, invalidity, and unenforceability with respect to the ’968 patent, the ’605 patent, the ’606 patent, the ’607 patent, the ’608 patent, the ’609 patent, the ’610 patent, the ’690 patent, the ’029 patent, and the ’518 patent (*see* D.I. 125, 126);

WHEREAS, in an effort to streamline the case and in the interest of judicial economy, the parties have entered into a separate Consent Decree and Partial Final Judgment relating to the '968 patent, and entered into a separate Stipulation As To the '605 patent, the '606 patent, the '608 patent, the '609 patent, and the '518 patent (collectively, the "Non-Trial Patents") (D.I. 276);

WHEREAS the parties agree that this Stipulation will replace and supersede the previous Stipulation entered at D.I. 276;

WHEREAS, Watson has stipulated to infringement of claims 1-4 and 9 of the '607 patent; claims 1-3, 8-12, and 17 of the '610 patent; claims 1-3 and 7-12 of the '690 patent; and claims 1, 3-5, and 7-10 of the '029 patent;

WHEREAS, the Court began a bench trial on September 5, 2014 to determine whether claims 1-4 and 9 of the '607 patent; claims 1-3, 8-12, and 17 of the '610 patent; claims 1-3 and 7-12 of the '690 patent; and claims 1, 3-5, and 7-10 of the '029 patent are invalid and unenforceable;

WHEREAS, in order to streamline the issues and minimize the burden on the Court in deciding this case in the accelerated timeframe discussed in the Consent Order (D.I. 278), Plaintiffs have represented that they are no longer asserting infringement of claims 1-2, 4, and 9 of the '607 patent; claims 1-3, 8-12, and 17 of the '610 patent; claims 1-3 and 7-12 of the '690 patent; and claims 1, 3-5, and 7-10 of the '029 patent (collectively, the "Withdrawn Claims") and that the only claim now asserted against Watson in this litigation is claim 3 of the '607 patent; and

WHEREAS, in order to simplify the issues with respect to claim 3 of the '607 patent, the parties agree that whether Watson's ANDA infringes any valid and enforceable claim of the

Non-Trial Patents and the Withdrawn Claims will be determined by the outcome of the trial and appeal with respect to claim 3 of the '607 patent as provided herein.

THEREFORE, IT IS HEREBY STIPULATED AND AGREED that:

1. If the Court enters a judgment that claim 3 of the '607 patent is invalid or unenforceable ("Judgment for Watson"), and that judgment becomes a final decision from which no appeal (other than a petition to the Supreme Court for a writ of *certiorari*) has been or can be taken ("Final Court Decision"), the parties agree to and shall request that the Court enter the Consent Decree and Judgment attached as Exhibit A.
2. If the Court enters a judgment that claim 3 of the '607 patent is not invalid and not unenforceable ("Infringement Judgment") and that judgment becomes a Final Court Decision, the parties agree to and shall request that the Court enter the Stipulation of Dismissal attached as Exhibit B;
3. Watson may not rely on this Stipulation with respect to any claim of infringement, invalidity or unenforceability of claim 3 of the '607 patent;
4. Watson may rely on this Stipulation with respect to noninfringement of the Non-Trial Patents and the Withdrawn Claims only with respect to this case after a Judgment for Watson that becomes a Final Court Decision and to the extent permitted by law;
5. Nothing in this Stipulation affects the claims and counterclaims remaining in this matter, including those against Watson related to claim 3 of the '607 patent, which shall continue; and
6. Each party shall bear its own costs and attorney fees with respect to the parties' claims related to the Non-Trial Patents and the Withdrawn Claims.

Respectfully submitted:

s/ Charles M. Lizza

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s/ Liza M. Walsh

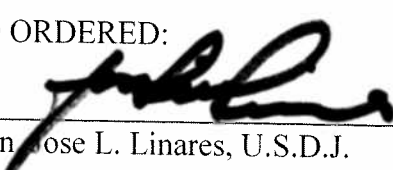
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*Attorneys for Defendant
Watson Laboratories, Inc.*

Dated: October 30th, 2014

SO ORDERED:



Hon. Jose L. Linares, U.S.D.J.

EXHIBIT A

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

_____	X	
AUXILIUM PHARMACEUTICALS, INC.	:	
and FCB I LLC,	:	
	:	Honorable Jose L. Linares, U.S.D.J.
	:	
Plaintiffs,	:	Civil Action No. 12 CV 3084 (JLL) (MAH)
	:	
v.	:	Electronically Filed
	:	
WATSON LABORATORIES, INC.,	:	
	:	
Defendant.	:	
_____	X	

**CONSENT DECREE AND JUDGMENT AS TO U.S. PATENT NOS.
7,608,605; 7,608,606; 7,608,607; 7,608,608; 7,608,609;
7,608,610; 7,935,690; 8,063,029; and 8,178,518**

WHEREAS this action has been brought by Plaintiffs Auxilium Pharmaceuticals, Inc. and FCB I LLC (collectively, “Plaintiffs”) against Defendant Watson Laboratories, Inc. (“Watson”);

WHEREAS Plaintiffs asserted that Watson’s ANDA No. 09-1073 (“Watson’s ANDA”) infringes, among others, United States Patent Nos. 7,320,968; 7,608,605; 7,608,606; 7,608,607; 7,608,608; 7,608,609; 7,608,610; 7,935,690; 8,063,029; and 8,178,518 (respectively, the ’968 patent, the ’605 patent, the ’606 patent, the ’607 patent, the ’608 patent, the ’609 patent, the ’610 patent, the ’690 patent, the ’029 patent, and the ’518 patent) (*see* D.I. 1);

WHEREAS Watson filed Counterclaims for declarations of noninfringement, invalidity, and unenforceability with respect to the ’968 patent, the ’605 patent, the ’606 patent, the ’607

patent, the '608 patent, the '609 patent, the '610 patent, the '690 patent, the '029 patent, and the '518 patent (*see* D.I. 125, 126);

WHEREAS, in an effort to streamline the case and in the interest of judicial economy, the parties have entered into a separate Consent Decree and Partial Final Judgment relating to the '968 patent, and a separate Stipulation with respect to the '605 patent, the '606 patent, the '608 patent, the '609 patent, and the '518 patent, (collectively, the "Non-Trial Patents") and claims 1-2, 4, and 9 of the '607 patent; claims 1-3, 8-12, and 17 of the '610 patent; claims 1-3 and 7-12 of the '690 patent; and claims 1, 3-5, and 7-10 of the '029 patent (collectively, the "Withdrawn Claims"); and

WHEREAS, in order to simplify the issues at the trial with respect to claim 3 of the '607 patent, the parties agreed that whether Watson's ANDA infringes any valid and enforceable claim of the Non-Trial Patents and the Withdrawn Claims would be determined by the outcome of the trial with respect to claim 3 of the '607 patent.

THEREFORE, IT IS HEREBY STIPULATED, ORDERED, ADJUDGED, AND DECREED that:

1. Watson's ANDA does not infringe claims 1-2 or 4-15 of the '607 patent or any claim of the '605 patent, the '606 patent, the '608 patent, the '609 patent, the '610 patent, the '690 patent, the '029 patent, and the '518 patent;
2. Final Judgment of noninfringement is hereby entered in favor of Watson as to the following Counts of Plaintiffs' Complaint (D.I. 1): Count II (infringement of the '605 patent); Count III (infringement of the '606 patent); Count V (infringement of the '608 patent); Count VI (infringement of the '609 patent); Count VII (infringement of the '610 patent); Count VIII

(infringement of the '690 patent); Count IX (infringement of the '029 patent); and Count X (infringement of the '518 patent);

3. Final Judgment of noninfringement is hereby entered in favor of Watson as to the following Counts of Watson's Amended Answer, Affirmative Defenses, and Counterclaims (D.I. 125, 126): Count IV (noninfringement of the '605 patent); Count VI (noninfringement of the '606 patent); Count X (noninfringement of the '608 patent); Count XII (noninfringement of the '609 patent); Count XIV (noninfringement of the '610 patent); Count XVI (noninfringement of the '690 patent); Count XVIII (noninfringement of the '029 patent); and Count XX (noninfringement of the '518 patent);

4. As a result of the aforementioned Final Judgment of noninfringement being entered in this action with respect to the '605 patent, the '606 patent, the '608 patent, the '609 patent, the '610 patent, the '690 patent, the '029 patent, and the '518 patent, there remains no actual controversy between the parties with respect to the validity or enforceability of the '605 patent, the '606 patent, the '608 patent, the '609 patent, the '610 patent, the '690 patent, the '029 patent, and the '518 patent;

5. Watson may not rely on this Consent Decree and Judgment with respect to any claim of infringement, invalidity or unenforceability of claim 3 of the '607 patent;

6. Watson may rely on this Consent Decree and Judgment with respect to noninfringement of the Non-Trial Patents and the Withdrawn Claims only with respect to this case and to the extent permitted by law;

7. Nothing in this Consent Decree and Judgment affects the claims and counterclaims remaining in this matter, including those against Watson related to claim 3 of the '607 patent; and

8. Each party shall bear its own costs and attorney fees with respect to the parties' claims related to the Non-Trial Patents and the Withdrawn Claims.

Respectfully submitted:

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*Attorneys for Defendant
Watson Laboratories, Inc.*

Dated: November __, 2014

SO ORDERED:

Hon. Jose L. Linares, U.S.D.J.

EXHIBIT B

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

	X	
AUXILIUM PHARMACEUTICALS, INC.	:	
and FCB I LLC,	:	
	:	Honorable Jose L. Linares, U.S.D.J.
Plaintiffs,	:	
	:	Civil Action No. 12 CV 3084 (JLL) (MAH)
v.	:	
	:	Electronically Filed
WATSON LABORATORIES, INC.,	:	
	:	
Defendant.	:	
	X	

**STIPULATION OF DISMISSAL AS TO U.S. PATENT NOS.
7,608,605; 7,608,606; 7,608,607; 7,608,608; 7,608,609;
7,608,610; 7,935,690; 8,063,029; and 8,178,518**

WHEREAS this action has been brought by Plaintiffs Auxilium Pharmaceuticals, Inc. and FCB I LLC (collectively, “Plaintiffs”) against Defendant Watson Laboratories, Inc. (“Watson”);

WHEREAS Plaintiffs asserted that Watson’s ANDA No. 09-1073 (“Watson’s ANDA”) infringes, among others, United States Patent Nos. 7,320,968; 7,608,605; 7,608,606; 7,608,607; 7,608,608; 7,608,609; 7,608,610; 7,935,690; 8,063,029; and 8,178,518 (respectively, the ’968 patent, the ’605 patent, the ’606 patent, the ’607 patent, the ’608 patent, the ’609 patent, the ’610 patent, the ’690 patent, the ’029 patent, and the ’518 patent) (*see* D.I. 1);

WHEREAS Watson filed Counterclaims for declarations of noninfringement, invalidity, and unenforceability with respect to the ’968 patent, the ’605 patent, the ’606 patent, the ’607

patent, the '608 patent, the '609 patent, the '610 patent, the '690 patent, the '029 patent, and the '518 patent (*see* D.I. 125, 126);

WHEREAS, in an effort to streamline the case and in the interest of judicial economy, the parties have entered into a separate Consent Decree and Partial Final Judgment relating to the '968 patent, and a separate Stipulation with respect to the '605 patent, the '606 patent, the '608 patent, the '609 patent, and the '518 patent, (collectively, the "Non-Trial Patents") and claims 1-2, 4, and 9 of the '607 patent; claims 1-3, 8-12, and 17 of the '610 patent; claims 1-3 and 7-12 of the '690 patent; and claims 1, 3-5, and 7-10 of the '029 patent (collectively, the "Withdrawn Claims"); and

WHEREAS, in order to simplify the issues at the trial with respect to claim 3 of the '607 patent, the parties agreed that whether Watson's ANDA infringes any valid and enforceable claim of the Non-Trial Patents and Withdrawn Claims would be determined by the outcome of the trial with respect to claim 3 of the '607 patent.

THEREFORE, IT IS HEREBY STIPULATED AND AGREED that:

1. The parties hereby dismiss the following Counts of Plaintiffs' Complaint (D.I. 1): Count II (infringement of the '605 patent); Count III (infringement of the '606 patent); Count V (infringement of the '608 patent); Count VI (infringement of the '609 patent); Count VII (infringement of the '610 patent); Count VIII (infringement of the '690 patent); Count IX (infringement of the '029 patent); and Count X (infringement of the '518 patent); and all Counts of Watson's Amended Answer, Affirmative Defenses, and Counterclaims (D.I. 125, 126) concerning the '605 patent, the '606 patent, the '608 patent, the '609 patent, the '610 patent, the '690 patent, the '029 patent, and the '518 patent;

2. Watson may not rely on this Stipulation of Dismissal with respect to any claim of infringement, invalidity or unenforceability of claim 3 of the '607 patent;

3. Nothing in this Stipulation of Dismissal affects the claims and counterclaims remaining in this matter, including those against Watson related to claim 3 of the '607 patent, which shall continue; and

4. Each party shall bear its own costs and attorney fees with respect to the parties' claims related to the Non-Trial Patents and the Withdrawn Claims.

Respectfully submitted:

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Dated: November __, 2014

SO ORDERED:

Hon. Jose L. Linares, U.S.D.J.